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October 28, 2013

EX PARTE NOTICE

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Special Access Rates for Price Cap Local Exchange Carriers, WC Docket No. 05-25, RM-10593; Technology Transitions Policy Task Force, GN Docket No. 13-5; Petitions to Launch a Proceeding Concerning the TDM-to-IP Transition, GN Docket No. 12-353; Connect America Fund, WC Docket No. 10-90.

Dear Ms. Dortch:

COMPTEL joins other purchasers of AT&T's special access services¹ in conveying its concern with the Accessible Letters AT&T sent to COMPTEL members. While COMPTEL has expressed its concern with the anti-competitive impact of long-term contracts, AT&T's elimination of such contracts, without a corresponding reduction in price of the shorter-term contracts, leaves purchasers of these services with a substantial price increase and still no viable alternative. As Cbeyond *et al* estimated, the cost to purchasers of special access services (which include competitive carriers and end-user customers), as a result of this change, will be in the tens of millions of dollars,² providing AT&T a substantial windfall.

The impact of what is, in effect, a rate increase will ripple through the economy as a whole. Special access services are a critical component for numerous downstream products and services. Wireless carriers use it for backhaul. Competitive LECs use these services in providing services to their retail enterprise customers and entities seeking to connect with the

¹ See Letter of Cbeyond *et al* to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-25 and 10-90, RM-10593, GN Docket Nos. 13-5, 12-353, filed Oct. 18, 2013 ("Cbeyond *et al* Letter").

² *Id.* at 2.

Internet backbone.³ It is also a critical input for non-carrier enterprise customers that use it as an input for a wide variety of products and services, such as banking, manufacturing, and data management services.

A spokesperson for AT&T said, with regard to AT&T's plan to stop offering contracts longer than 36 months, that "this is an effort to wean customers off TDM-based services."⁴ In other words, AT&T is trying to further limit the options of special access purchasers. First, if the TDM market is obsolete and the Ethernet market is competitive, as AT&T alleges, it would not need to "wean" customers off their TDM service because the customers themselves would *choose* to purchase Ethernet services. Moreover, if AT&T was interested in providing an inducement (as opposed to penalty) to encourage customers to switch to shorter-term contracts, it could simply provide greater discounts (than it does today) so that customers would desire such arrangements. Indeed, if the market for these services were truly competitive (as AT&T continuously claims) it would not withdraw longer-term contracts without simultaneously providing discounts to its shorter term contract, because in a competitive market forcing customers off long-term contracts would simply encourage them to seek alternatives more quickly. However, AT&T stands in a dominant position and need not fear that it will lose market share by cutting off the availability of these long-term services. Indeed, in this instance, it actually stands to gain additional revenue by doing so because of the market failure in the special access market. The fact is that AT&T wants the higher revenues and higher prices that it can extract by withdrawing the discounts available through longer term contracts from its captive customers. As noted, AT&T could easily offer three year plans at discounts equal to the discounts available in the longer-term contracts. TDM is the only option in some places, and it is all the more important therefore that rates for DS1 and DS3 services are just and reasonable in those locations.

COMPTEL supports the transition from TDM to Ethernet and its members have been leading the way, but the transition should not be used by AT&T as a means of raising prices. If AT&T were focused solely on facilitating the transition, it would offer Ethernet at more reasonable prices. There is simply no evidence that even those customers desiring (through their own choice) other services, such as Ethernet, will be able to escape AT&T's market dominance by switching from TDM services to Ethernet services. In our comments supporting a petition to reverse the forbearance granted on non-TDM special access services, COMPTEL demonstrated that the AT&T prices (as provided for in its guidebook) for its retail Ethernet access and transport services are unreasonably and unjustly inflated, *often greater by an order of magnitude* than a comparable finished Ethernet service constructed from a wholesale Ethernet Transport Service (ETS) offered by rural ILECs.⁵ For example, even with a three-year contract, AT&T's (guidebook) prices are 6.8 times more costly than a comparable service

³ See *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd. 18290, ¶ 24 (2005) ("*SBC-AT&T Merger Order*").

⁴ "Rivals Protest AT&T Rate Shift," Wall Street Journal, October 23, 2013.

⁵ COMPTEL Comments, WC Docket No. 05-25 and RM-10593, at 10-11, April 16, 2013 ("COMPTEL Comments").

constructed using the NECA #5 tariff 2 Mbps Ethernet access service, and 11.6 times more costly than the comparable 1 Gbps arrangement.⁶

AT&T's principal response to the COMPTTEL Ethernet analysis is the exceptionally weak claim that the comparison was invalid because it was based on "the 'rack rates' published in AT&T's Guidebook, not on the lower, discounted rates for service that the Guidebook indicates are available and that customers actually pay."⁷ COMPTTEL fully recognized that AT&T provides discounts to its guidebook prices, but is constrained by the fact that these discounts are *known only to AT&T*. Significantly, if the effect of these discounts actually contradicted the core conclusion of the COMPTTEL analysis – that is, that AT&T's Ethernet prices are not just and reasonable – then AT&T would have provided such a comparison. The very fact that AT&T has chosen to make the argument that discounts apply, but not offer the proof that the discounts change the result, is telling evidence that its prices are simply excessive. In addition, as this very filing demonstrates, the level and duration of any such discounts are within AT&T's control, and will disappear to meet AT&T's strategic objectives.

Contrary to AT&T's claims, the COMPTTEL Ethernet analysis demonstrates that there is no escaping AT&T's market power by shifting to Ethernet services. AT&T points to *national* market share statistics as rebuttal, but even if these national statistics are accurate (which we cannot determine), the statistics are meaningless because they dilute AT&T's market share within its ILEC footprint (where they have market power) with its position outside that footprint (where it operates as a CLEC).

Apparently unwilling to provide any analysis of its own Ethernet prices and volumes, AT&T points to Verizon's statement that it has 3,300 contracts.⁸ Because Verizon's market dominance (within its region) is comparable to AT&T's (within the AT&T ILEC footprint), the Commission should fully expect that it has thousands of contracts. Companies with market-power don't price at levels that foreclose sales, they price at levels to maximize the profit from those sales. Of course Verizon has thousands of contracts, for frequently there is no alternative.

For its part, Verizon fares no better attempting to rebut the COMPTTEL Ethernet Analysis (which could not evaluate any of Verizon's Ethernet prices because they are *all* proprietary),⁹ than AT&T. Indeed, it appears that Verizon only "skimmed" the COMPTTEL analysis because its principal claim is that the analysis is "equivalent to demonstrating that the price of an apple is not the same as the cost of growing an orange," because COMPTTEL's analysis "compared the retail prices for a finished Ethernet service in urban and suburban markets to the lower wholesale price in the NECA tariff for a broadband transmission service

⁶ Table 2 of Attachment A to COMPTTEL Comments, at 6.

⁷ AT&T Reply Comments, WC Docket No. 05-25 and RM-10593, at 6, May 31, 2013 ("AT&T Reply").

⁸ AT&T Reply at 6.

⁹ Attachment A to COMPTTEL Comments, at 3.

that is not ‘end user ready’.”¹⁰ Verizon’s Reply is completely unfounded, however, because the analysis fully included the additional costs to make the service “end user ready,”¹¹ and is, as a result, an “apples-to-apples” comparison.¹² As COMPTTEL states in its comments:

“We refer to the BOC offerings as ‘*finished services*’ in as much as these services can be utilized directly by end users with no need for additional components. In contrast, the NECA #5 wholesale offerings must be augmented with additional components (ex. customer premise equipment, etc.) to be considered “end user ready.” This analysis accounts for all additional components to augment the NECA #5 offerings, as necessary, to build a service functionally comparable to those of the BOCs.”

Competitive carriers, for the most part, would prefer a wholesale product where they could add the electronics and, therefore, be more innovative in their offerings to consumers.

Despite these assertions by AT&T and Verizon, the fact remains that COMPTTEL Ethernet Analysis stands un rebutted and its fundamental conclusion – that customers and carriers cannot escape the market power of these ILECs by shifting to Ethernet – requires that the Commission engage in active oversight of these critical TDM and non-TDM services. AT&T’s instant effort to eliminate discounts (albeit discounts offered only to long-term customers) is further evidence of its market dominance.

Finally, it is disturbing that AT&T’s changes to its pricing of special access services comes as the Commission is evaluating the market and considering major special access reform, in addition to addressing issues related to the transition of the PSTN to IP technology. AT&T’s actions both demonstrate the reason Commission involvement is necessary and raises the question as to whether the Commission should allow AT&T to increase prices by discontinuing particular service offerings competitors are using to directly compete with it in the retail marketplace pending the outcome of these proceedings.

Respectfully submitted,

/s/

Karen Reidy

¹⁰ Verizon Reply Comments, WC Docket No. 05-25 and RM-10593, at 6, May 31, 2013 (“Verizon Reply”).

¹¹ See Attachment A to COMPTTEL at 2, n. 3 (Emphasis added).

¹² In addition to mischaracterizing the COMPTTEL Ethernet Analysis, Verizon makes the exceptionally odd comment that it is unclear who performed the study (the ETC Group) or their qualifications, while at the very same time citing to the webpage that provides that information. See Verizon Reply at 6, n. 29.